

Federal Communications Commission

DA 97-344

FCC MAIL SECTION

Before the
 FEB 21 4 37 PM Federal Communications Commission
 Washington, D.C. 20554

In the Matter of DISPATCHED BY)
)
 Amendment of Section 73.202(b),) MM Docket No. 96-50
 Table of Allotments,) RM-8768
 FM Broadcast Stations.)
 (Nikiski, Alaska))

REPORT AND ORDER
 (Proceeding Terminated)

Adopted: February 14, 1997

Released: February 21, 1997

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making (Notice)*, 11 FCC Rcd 3553 (1996), issued in response to a petition filed by William F. Glynn, Jr. ("petitioner") proposing the allotment of Channel 227C2 to Nikiski, Alaska, as that community's first local aural transmission service. Petitioner filed supporting comments in response to the *Notice*. Comments were also filed on behalf of Chester P. Coleman ("Coleman"), followed by an Erratum.¹ Petitioner filed reply comments.² No other comments were received.

2. Although Coleman supports the allotment of a Class C2 channel to Nikiski, and indicates his intention to file an application for such if allotted, he requests that either alternate Channel 283C2 or 284C2 be allotted instead of proposed Channel 227C2. In support, Coleman states that unlike Channel 227C2, as either of the alternate Class C2 channels he has suggested could be allotted to Nikiski without a site restriction, or a very minimal one, his proposal would result in a more efficient use of the spectrum, as potential applicants would be afforded

¹Coleman's Erratum, filed after the initial comment date established herein, is designed to reflect that the alternative channels he has requested for consideration at Nikiski are Class C2, as proposed in the *Notice*, and not Class A's, as stated in his comments. However, as the engineering studies accompanying Coleman's initial comments are premised on the consideration of alternate Class C2 channels for allotment to Nikiski, and were evaluated as such by the staff, we will accept the Erratum for clarification only.

²Petitioner's reply comments were filed one-day late. Pursuant to Section 1.415(d) of the Commission's Rules, the acceptance of comments filed after the comment cycle is not contemplated unless specifically requested or authorized by the Commission. While neither criteria is applicable here, we will accept the petitioner's reply comments to enable us to resolve this proceeding on the basis of a complete record.

greater flexibility in site selection.³

3. In response, petitioner insists that as proposed Channel 227C2 can be allotted to Nikiski consistent with Sections 73.207(b) and 73.315 of the Commission's Rules, and in the absence of an overwhelming demonstration of the alleged superiority of either suggested Channel 283C2 or 284C2, the site restriction attached to Channel 227C2 is not remarkably sufficient to justify the consideration of Coleman's alternate proposal.⁴

4. While the Commission endeavors to allot the least restrictive channel possible to a community, we are guided by the overall public interest benefits to be attained by the proposal under consideration. In this instance, we believe that Channel 227C2 is equivalent to Channel 283C2 or 284C2 for allotment purposes. The Commission considers channels to be equivalent provided they are of the same class distinction, would comply with the minimum spacing criteria, and would enable a broadcast facility to provide 70 dBu coverage to the proposed allotment community. See *Vero Beach, Florida*, 3 FCC Rcd 1049 (1988), rev. denied, 4 FCC Rcd 2184, 2185 (1989). Although we would consider other pertinent factors which might preclude a finding of channel equivalency, such as environmental effects, zoning considerations, or aeronautical hazards which would prevent a station from constructing on a particular channel, Coleman has not presented documented information to indicate that any of the enumerated considerations are present within the area designated to accommodate a tower for Channel 227C2 at Nikiski, or demonstrated that the site restriction would reduce the potential population coverage to be served by a station operating thereon vis-à-vis other Class C2 channels. Accordingly, as Coleman has not established that the site restriction attached to Channel 227C2 would lessen greatly the flexibility of potential applicants to obtain a suitable transmitter site and to operate consistent with the technical requirements of the Commission's Rules, the alleged superiority of either Channel 283C2 or 284C2 has not been demonstrated.

5. In consideration of the above, we will allot Channel 227C2 to Nikiski based upon the interests expressed in providing a first local aural transmission service to that community. As stated in the *Notice*, Channel 227C2 can be allotted to Nikiski in conformity with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules, provided the transmitter therefor is located at least 11 kilometers (6.8 miles) south of the community at coordinates 60-35-40 and 151-20-00. The site restriction is required to avoid a short-spacing to the allotment reference site for Channel 225C, Anchorage, Alaska, at

³Coleman asserts that although area translators operating on Channels 283 and 284 would be affected by the alternate proposal, those secondary services would be required to yield to a full service broadcast operation in the event either Channel 283C2 or 284C2 is selected for allotment to Nikiski.

⁴Additionally, although petitioner mistakenly believes that alternate Channel 283C2 could not be allotted to Nikiski consistent with Section 73.207(a) and (b) of the Commission's Rules, in light of our ultimate determination herein, no further consideration of Channel 283C2 at Nikiski will be given.

coordinates 61-13-06 and 149-53-30.⁵

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective April 7, 1997, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED to include Nikiski, Alaska, as follows:

<u>City</u>	<u>Channel No.</u>
Nikiski, Alaska	227C2

7. IT IS FURTHER ORDERED, That the above proceeding IS TERMINATED.

8. The window period for filing applications for Channel 227C2 at Nikiski, Alaska, will open on April 7, 1997, and close on May 8, 1997.

9. For further information concerning the rule making proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. Questions related to the window application filing process for Channel 227C2 at Nikiski, Alaska, should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

⁵We note that Station KWQK(FM) has been issued a construction permit for Channel 225C at Anchorage at coordinates 61-21-05 and 149-29-10 (File No. BPPH-860102MM), and has filed an application to downgrade Station KWQK(FM) to operate on Channel 225C2 at coordinates 61-08-13 and 149-50-06 (File No. BPPH-951018IE). Neither of the reference sites specified for Station KWQK(FM) requires the site restriction on the proposed allotment of Channel 227C2 at Nikiski. Therefore, once a license has been issued for Station KWQK(FM) at a nonconflicting site at Anchorage, the site restriction specified herein for Channel 227C2 at Nikiski may be reevaluated at the application stage.